

CONTINUING CARE RETIREMENT COMMUNITIES

DRAFT POLICY STATEMENT CONTINUING CARE AT HOME

Proposed June 20, 2019

TO:

Continuing Care Retirement Community Operators, Executive Staff, Managers, and industry stakeholders.

SUBJECT:

Applications to offer Continuing Care at Home contracts.

PURPOSE:

The purpose of this letter is to inform all Continuing Care Retirement Community (CCRC) stakeholders of the process for filing an application to offer Continuing Care at Home contracts and to clarify matters related to such offerings.

BACKGROUND:

Chapter 549 of the Laws of 2014 as amended by Chapter 7 of the Laws of 2015 authorized existing Article 46 CCRCs to apply to the Department of Health (DOH) to offer Continuing Care at Home contracts. This type of contract will allow seniors to take advantage of CCRC services while living in their home and offer the security of long term care services in a CCRC's Assisted Living/Adult Care or Skilled Nursing facility if needed. This contract option is not currently available to Article 46-A CCRCs. Article 46 CCRCs may offer continuing care at home contracts upon approval by the CCRC Council to amend the CCRC's Certificate of Authority.

ARTICLE 46 PUBLIC HEALTH LAW REQUIREMENTS

Definitions:

Public Health Law (PHL) § 4601(2-a) "Continuing care retirement contract" or "continuing care at home contract" shall mean a single contract to provide a person the services provided by a continuing care retirement community.

PHL § 4601(2-b)(f) communities established under this article offering continuing care at home contracts must also offer continuing care retirement contracts and must maintain a continuing care retirement community that operates in support of the continuing care at home contracts

PHL § 4601(8-b) "Continuing care at home contract" shall mean a single contract to provide a person with long term care services and supports based upon the person's needs and coordinated by a case manager, which shall include services provided to the person in his or her residence and services of the community's nursing facility and adult care facility, or affiliated facilities.

PHL § 4601(15-b) "Home resident" shall mean a continuing care at home contract holder who resides in a private residence off of the continuing care retirement community campus.

Requirements for approval

PHL § 4605-a. Certificate of authority; authority to offer continuing care at home contracts. A continuing care retirement community may offer continuing care at home contracts upon approval by the CCRC Council to amend the continuing care retirement community's certificate of authority. In order to qualify for an amendment to its certificate of authority, the continuing care retirement community shall submit to the commissioner the following:

1. a business plan to the commissioner and superintendent that includes the following:

(a) a description of the continuing care at home services that will be provided, the market that will be served by the continuing care at home contracts, and the fees to be charged to prospective continuing care at home contract holders;

(b) a copy of the proposed continuing care at home contract; and

(c) an actuarial study prepared by an independent actuary in accordance with standards adopted by the American Academy of Actuaries demonstrating the impact that the continuing care at home contracts will have on the overall operations of the continuing care retirement community and further demonstrating that the addition of continuing care at home contracts will not jeopardize the financial solvency of the continuing care retirement community.

2. a market feasibility study demonstrating to the commissioner and superintendent sufficient consumer interest in continuing care at home contracts and further demonstrating that the addition of continuing care at home contracts will not have an adverse impact on the provision of services to continuing care retirement contract holders.

3. materials that meet all requirements established by the New York state department of financial services.

4. A copy of the notification sent to continuing care retirement contract holders describing the anticipated impact of the addition of continuing care at home contracts on continuing care retirement community resources and proof that such notification has been distributed to all continuing care retirement contract holders.

Limits on contracts

PHL § 4605-b. Certificate of authority; limitation on continuing care at home contracts. The number of continuing care at home contracts approved on a certificate of authority shall be limited to:

1. The number of approved living units on the continuing care retirement community's premises that are intended for ILU residents, except that the council may approve additional contracts upon a submission to the commissioner by an operator consistent with the provisions set forth in section forty-six hundred five-a of this article;
2. The demonstrated number of continuing care at home contract holders that can be supported in the existing or approved future capacity of the adult care facility and skilled nursing facility consistent with the provisions set forth in section forty-six hundred five-a of this article; and
3. Conditions set forth by the New York state department of financial services, based upon the superintendent's assessment of the following:
 - (a) the overall financial impact on the community; and
 - (b) the submitted materials set forth in section forty-six hundred five-a of this article.

Requirements for Continuing care at home contracts

Continuing care at home contracts are subject to the Contract requirements of PHL § 4608 unless specifically noted. Contract requirements specific to Continuing care at home contracts include:

PHL § 4608 (6)(a) The procedures and conditions under which a resident may be transferred from his or her living unit or home including a statement that, at the time of transfer, the resident will be given the reasons for the transfer; the process by which a transfer decision is made; the persons with the authority to make the decision to transfer; a description of any change in charges to be paid by the resident for services not covered by the contract fees as a result of the transfer; and a statement regarding the disposition of and the right to return to the living unit in cases of temporary and permanent transfers.

PHL § 4608(8) For continuing care at home contracts, a statement that, if the resident dies prior to the effective start date of services or, through illness, injury, or incapacity is precluded from meeting the eligibility terms of the contract, the contract is automatically rescinded and the resident or his or her legal representative shall receive a full refund of all moneys paid to the facility, except for those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum, signed by the parties to the contract;

PHL § 4608(20) Continuing care at home contracts shall include the following:

- a. a statement describing the circumstances under which a contract holder may move into a campus independent living unit, adult care facility or nursing home;
- b. a statement as to whether and under what circumstances transportation will be provided to continuing care at home contract holders;
- c. a statement describing the mechanism for monitoring continuing care at home contract holders;
- d. a statement describing the method by which the community will determine priority for access to available ILUs between a continuing care at home contract holder who wishes to convert the contract to a continuing care retirement contract and a continuing care retirement contract holder;
- e. a statement describing any applicable geographical limits of the continuing care at home services, and the policy that will be followed in the event that a continuing care at home contract holder relocates to a different residence outside the geographical limits covered by the continuing care at home contract; and
- f. a statement describing any applicable policy that would entitle a continuing care at home contract holder to select adult care facility or skilled nursing facility placement in a facility that is not part of the continuing care retirement community.

Additional requirements

§ 4608-a. Continuing care at home requirements. Continuing care retirement communities offering continuing care at home contracts shall:

1. Ensure that all continuing care retirement community employees or contractors providing services to continuing care at home contract holders are duly licensed or certified pursuant to law, which shall include but not be limited to any licensure requirements for the provision of home care services set forth in article thirty-six of this chapter;
2. Include all operating expenses for continuing care at home contracts in the calculation of reserve requirements required by the department of financial services; and
3. Include all operating activities for continuing care at home contracts in the total operation of the community when submitting financial reports as required by the department and the department of financial services.

PROGRAM POLICY:

The Department of Health (DOH), the Department of Financial Services (DFS), and the CCRC Council Regulatory and Framework Improvement Committee received input from national Continuing Care at Home providers in order to establish program policy to support Continuing Care at Home contracts in New York State.

The following program policy was developed by applying the revisions to Article 46 of PHL under Chapter 549 of the Laws of 2014 as amended by Chapter 7 of the Laws of 2015 and an assessment of national Continuing Care at Home contract offerings.

Purpose:

Continuing Care at Home is intended to offer New York State seniors the long term care security of a CCRC without having to leave their home. Continuing Care at Home offers long term care services and supports through a single contract that includes provisions for assisted living/adult care facility and/or skilled nursing facility services at the CCRC, or similar services, should they be needed. The product is targeted to seniors who wish to remain independent and living in their home for as long as it is safe to do so. Continuing Care at Home contracts offer such seniors care coordination and services based on a contract holder's need, intended to create a safe environment in the home and provide ancillary services as needed to allow a contract holder to remain in the home as medically appropriate. Continuing Care at Home contracts may also include access to a CCRC's community resources that will enhance the contract holder's quality of life.

Required services:

Pursuant to PHL § 4601(8-b) Continuing Care at Home contracts must provide a person with long term care services and supports based upon the person's needs and coordinated by a case manager, which shall include services provided to the person in his or her residence and services of the community's nursing facility and adult care facility, or affiliated facilities. Therefore, a Continuing Care at Home contract must include case manager services throughout the entirety of the contract and include terms for assisted living/adult care facility and skilled nursing facility coverage, regardless of the payor source. The contract shall be deemed in effect while the resident is in the assisted living/adult care facility or skilled nursing facility as long as other termination clauses in the contract have not been met. Placement of a contract holder in an Article 7 of Social Service Law licensed assisted living/adult care facility or PHL Article 28 licensed skilled nursing facility in itself shall not be the sole reason for termination of a contract.

Case manager (care coordinator) services should be provided throughout the term of a contract in a frequency that allows for adequate management of the contract holder's care and as outlined in a care management plan agreed to by the contact holder. The role of the case manager must be clearly outlined in the Continuing Care at Home contract.

Hospice services, though not required under Public Health Law Article 46, should be coordinated to the extent possible by the case manager under the terms of the Continuing Care at Home contract.

Optional services:

The CCRC may provide or contract with another appropriately licensed or qualified entity to provide services necessary to allow a contract holder to remain in the home for

as long as medically appropriate. The optional services provided should be adequate to support a contract holder's desire to remain in the home as medically appropriate and while safe to do so. The application submitted to the DOH must demonstrate how the services to be provided will meet the purpose of the program.

Pricing:

Continuing Care at Home contract pricing should be structured similar to CCRC residency agreement contract pricing in regard to the payment of a onetime entrance fee (or membership fee) and a monthly fee. Entrance fees and monthly fees shall conform to the requirements for rate setting/pricing as set forth under DFS regulations for CCRCs.

Entrance fee (membership fee) will mean the one-time fee paid to the CCRC upon signing of a Continuing Care at Home contract to cover part of the cost of providing services under the contract. Entrance fees can be declining balance or fixed rate refundable upon termination. Entrance fee refunds must follow the policy set forth in the Entrance fee refund section of this policy statement.

Monthly fee is the amount to be paid to the CCRC on a monthly basis to cover part of the cost of providing services covered under the Continuing Care at Home contract. The monthly fee must cover case manager (care coordinator) services provided. Additional monthly charges may be paid to the CCRC for the provision of non-covered services under the terms set forth in the contract. A monthly statement will be provided to the contract holder detailing the amounts due to the provider and include an explanation of benefits (EOB). The EOB provided shall explain payments made by the CCRC for services provided under the contract, and the portion of the payment, if any, that is the contract holder's responsibility. The EOB will also note amounts applied to monthly caps and/or lifetime limits. Payments made by the CCRC for services that are the contract holder's responsibility will be included in the monthly statement and listed separately from the established monthly fee under the contract.

Daily caps and lifetime caps to service payments:

Continuing Care at Home contracts can include caps or limits to the amount that is paid by the CCRC for covered services. Limits and daily caps have been found nationally to be an effective mechanism for mitigating risk to the CCRC and allow for lower price points to be established for Continuing Care at Home monthly fees. The daily cap also allows for the contract holder to choose to remain in the home and pay the excess cost for home based services where otherwise they would be required to move into a facility based setting under the contract. Daily caps for payment of services should be set based off the CCRC's private pay daily rate for Skilled Nursing facility long term care services.

Continuing Care at Home contracts must clearly define the services that will apply to the daily cap and lifetime cap. Case manager (care coordinator) services can not be counted towards caps or limits to service costs. Case manager (care coordinator) services must be provided under the monthly fee if the contract is still in effect, even if the daily cap and

lifetime cap has been reached. A contract holder reaching a daily cap or lifetime cap in and of itself shall not be sole cause for termination of the contract. Daily caps shall be adjusted at the same rate as the CCRC's private pay daily rate for Skilled Nursing facility long term care services and the lifetime cap should be adjusted annually based on the average rate of inflation for cost of services provided.

Entrance fee (membership fee) refunds:

The only specific reference in PHL Article 46 related to the handling of Continuing Care at Home contract entrance fee refunds can be found in § 4608 (8) which states:

For continuing care at home contracts, a statement that, if the resident dies prior to the effective start date of services or, through illness, injury, or incapacity is precluded from meeting the eligibility terms of the contract, the contract is automatically rescinded and the resident or his or her legal representative shall receive a full refund of all moneys paid to the facility, except for those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum, signed by the parties to the contract.

PHL Article 46 does not specifically mention how entrance fee refunds will be handled after the Continuing Care at Home contract effective start date. PHL § 4609 and 10 NYCRR 901.4 are the guiding statute for refunds. In applying the intent of the language in the statute, the following program policy has been developed as guidance for refunds of Continuing Care at Home contract entrance fees after the effective start date:

- Entrance fee deposits shall be fully refundable if the contract is cancelled within seventy two hours of its execution.
- If notice of cancellation is received or if the death of a contract holder occurs within the first ninety days after the effective start date of the contract, the refund shall be at least equal to the entry fee and any other prepayment less the actual cost of any services rendered.
- If the notice of cancellation is received or if the death of a contract holder occurs after the first ninety of the contract effective date, any refund shall be not less than the entrance fee, except that the operator may retain no more than two percent per month after the contract effective date and no more than a four percent fee for processing.
- Any refund made subsequent to the contract effective date must be made within thirty days of the receipt of notice of cancellation or death of a contract holder.
- Termination of the contract by the CCRC under the termination clauses of the contract shall require entrance fee refunds to be handled in the same manner as a notice of cancellation by the contract holder or death of the contract holder.

Reporting and Audits:

The DOH and the DFS reserve the right to require reporting of the Continuing Care at Home contract activities and service provision in a form and manner communicated to the CCRC by the regulatory agencies. Such reporting and review of supporting documents may be deemed necessary to ensure that Continuing Care at Home contract services are being provided as required. At minimum, the following will be reported to the Departments monthly during the first year and as deemed necessary in subsequent periods:

- The number of Continuing Care at Home contracts executed, and contract holders actively under contract.
- Contract cancellations and entrance fee refunds issued.
- Service utilization by Continuing Care at Home contract holders.
- Admission of a Continuing Care at Home contract holder to a higher level of facility based care outside the home, even on a temporary basis.
- Failure to provide a contract service as prescribed in a contract holder's care plan.

The reporting requirements above are in addition to the reporting requirements for annual statements filed in accordance with 10 NYCRR 901.8. Continuing Care at Home information must be included in the annual statement filings for CCRCs.

Continuing Care at Home contract activities will be subject to review as part of a CCRC's triennial review as required under PHL § 4614.

CCRC's right to terminate Continuing Care at Home contracts:

Continuing Care at Home contracts must clearly state the terms under which a CCRC may cancel a Continuing Care at Home contract. If the contract allows for cancellation due to a safety assessment of the home, the contract holder must be given the right to have an independent second safety assessment conducted under the same standards as part of an appeals process. The cost of the second safety assessment can be charged to the contract holder if stated as such in the contract.

Based on the nature of the services provided, the Continuing Care at Home contract can include terms for cancellation should the contract holder refuse to allow for the provisions of services in the home as agreed to in the care plan or create a condition that makes provision of services in the home unsafe for the service provider. Such circumstances must be documented with the case manager and communicated to the contract holder for possible remedy before the contract cancellation occurs.

PROCESSING OF REQUESTS

Continuing Care at Home contract requests must be submitted to the DOH for review by regulating State Agencies (DOH, DFS and, if an equity model community, the Office of the Attorney General). CCRC Council approval is required to amend an Article 46

CCRC's Certificate of Authority to offer Continuing Care at Home contracts. CCRC Council approval is also required to allow a CCRC to offer an active number of Continuing Care at Home contracts in excess of the approved Independent Living Units (ILUs) on a CCRC's Certificate of Authority. A CCRC can file for approval of an active number of Continuing Care at Home contracts to be offered in excess of the approved Independent Living Units (ILUs) on a Certificate of Authority as part of the initial request to amend the Certificate of Authority to offer such contracts.

Materials must be submitted for review as required under PHL § 4605-a and as requested in the Continuing Care at Home contract application distributed by the DOH. The regulating State Agencies reserve the right to request additional materials deemed necessary.

Decisions on the maximum number of active Continuing Care at Home contracts to add to a Certificate of Authority will be based on the demonstrated capacity of the CCRC to provide services under the contract through the materials submitted for review. The regulating State Agencies and the CCRC Council reserve the right to adjust the requested maximum number of active Continuing Care at Home contracts to be added to a Certificate Authority based on their assessment of the CCRC's capacity to provide services and the potential impact of the Continuing Care at Home contracts on existing CCRC residents.

Continuing Care at Home contract requests that do not require the approval of the CCRC Council shall be handled as a reconfiguration project request under 10 NYCRR 901.9(f) and the CCRC Policy Statement for Requests for Community Reconfiguration after issuance of the Certificate of Authority.

****NOTE:** Article 46-A fee-for-service CCRCs are not eligible to file an application to amend their Certificate of Authority to offer Continuing Care at Home contracts.

SUBMISSIONS

Applications must be sent to the DOH via electronic mail or regular land mail. Electronic mailings should be submitted to CCRC@health.ny.gov. Land mail should be directed to:

Michael Heeran
New York State Department of Health
Center for Health Care Facility Planning, Licensure and Finance
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237.

Any questions regarding this policy statement should be submitted via email to CCRC@health.ny.gov.